

CONSERVATION COMMISSION, and
MISSOURI DEPARTMENT OF
CONSERVATION,

Plaintiffs,

V.

ERIC SCHMITT, in his official capacity
as Attorney General of Missouri, and

SARAH STEELMAN, in her official capacity as Commissioner of the Office of Administration,

Defendants.

Case No. 20AC-CC00342

JUDGMENT

Comes now the Court after hearing on February 5, 2021, and review of the record including Stipulation of Facts with all Exhibits and briefing filed by the parties after the hearing, finds as follows:

This declaratory judgment action addresses the constitutional division of authority between the Missouri General Assembly and the Missouri Conservation Commission. The dispute that prompted this action arose when the General Assembly, in an appropriations bill for Fiscal Year 2021, eliminated new land purchases and new payments in lieu of taxes (“PILT”) from the list of purposes for which moneys in the Conservation Fund can be spent by the Conservation Commission. When the Conservation Commission sent requests through the State’s SAMII system for payment for a land purchase and PILT, the Commissioner of Administration declined to certify those payments; they were never transmitted, then, to the state treasurer, and have not been paid.

As discussed below, such legislative restrictions are not permitted by the Missouri Constitution. In Article IV, §§ 43(a), (b), and (c), the constitution creates the Conservation Fund, then assigns to the Conservation Commission exclusive authority to decide when, how much, and for what money in the Conservation Fund may be spent within the parameters of § 43(b), which include land acquisition for conservation purposes and PILT. Section 43(c) leaves only adjustment of tax brackets to the General Assembly.

The Conservation Fund provisions in §§ 43(a), (b), and (c) operate against the backdrop of §§ 40(a), 41 and 44. These latter provisions respectively vest the Conservation Commission with the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state including land acquired for those purpose, thereby limiting the General Assembly's powers over these subjects; permit the Conservation Commission to acquire land it deems necessary for conservation purposes; and make §§ 40(a)-43 self-enforcing, leaving the General Assembly the limited power of enacting laws as may "aid" these provisions.

Together these constitutional provisions leave the Commissioner of Administration no choice but to certify the disputed payments pursuant to the direction of the Conservation Commission without regard to the language (if any) used by the General Assembly in an appropriations bill. This Court enters a declaratory judgment to that effect.

FINDINGS OF FACT

Parties and Positions

1. The Missouri Conservation Commission is a four-member entity created by § 40(a) of Article IV of the Missouri Constitution.
2. The Conservation Commission claims constitutional authority to order payments

from the Conservation Commission Fund within the state treasury independent of the appropriations authority of the Missouri General Assembly and the alternative legal positions on its authority set forth in the First Amended Petition.

3. The Missouri Department of Conservation (“MDC”) is a department of Missouri state government within the executive branch. Mo. Const. art. IV, § 12; § 252.002, RSMo.

4. The director of MDC is appointed by the Conservation Commission; the director, with the Conservation Commission’s approval, appoints assistants and other MDC employees deemed necessary by the Conservation Commission. Mo. Const. art. IV, § 42.

5. The MDC and its director act pursuant to the instructions of the Conservation Commission, including instructions to order payments from the Conservation Commission Fund within the state treasury independent of the appropriation authority of the Missouri General Assembly.

6. Defendant Attorney General Eric Schmitt (“Attorney General”) is a state elective official charged with defending state statutes and with representing the interests of the State in any proceeding or tribunal in which the State’s interests are involved.

7. Defendant Attorney General denies that the Conservation Commission has constitutional authority to order payments from the Conservation Commission Fund within the state treasury independent of the appropriations authority of the Missouri General Assembly and further denies the Commission’s alternative legal positions.

8. Defendant Office of Administration Commissioner Sarah Steelman (“OA Commissioner”) is charged by Article IV, § 28 of the Missouri Constitution with certain obligations with respect to state treasury withdrawals.

9. Defendant OA Commissioner denies that the Conservation Commission has constitutional authority to order payments from the Conservation Commission Fund within the state treasury independent of the appropriations authority of the Missouri General Assembly and further denies the Commission’s alternative legal positions.

Selected Historical Context of Missouri’s Management and Regulation of the Bird,
Fish, Game, Forestry and Wildlife Resources of the State

10. In 1970, the Missouri Department of Conservation published CONSERVATION CONTRASTS: THREE DECADES OF NON-POLITICAL MANAGEMENT OF WILDLIFE AND FORESTS IN MISSOURI (Werner O. Nagel, ed. 1970). A true and correct copy of Part I of the publication is attached as Exhibit 1. A complete copy of the publication shall be deemed part of the record of this case.

11. In 1981, the Missouri Department of Conservation published CHARLES CALLISON, MAN AND WILDLIFE IN MISSOURI: THE HISTORY OF ONE STATE’S TREATMENT OF ITS NATURAL RESOURCES (1981)). A true and correct copy of certain excerpts of the publication is attached as Exhibit 2. A complete copy of the publication shall be deemed part of the record of this case.

12. In 1987, the Missouri Department of Conservation published JAMES F. KEEFE,

MISSOURI DEPARTMENT OF CONSERVATION: THE FIRST 50 YEARS (1987). A true and correct copy of certain excerpts of the publication is attached as Exhibit 3. A complete copy of the publication shall be deemed part of the record of this case.

13. In 1975, MDC published a special August 1975 issue of Missouri Conservationist, to describe how the dedicated conservation sales tax dollars being voted on the November 1976 ballot would be prioritized to push conservation forward in Missouri. The proposal published in 1975 built on a 1970 planning document called Design for Conservation, a long-range strategic plan for conservation in Missouri. MDC pledged to use the additional funds to buy land for recreation, forestry, and the protection of critical habitats for rare and endangered species and to increase services to the public in the areas of wildlife and forest conservation research and to create a system of conservation interpretation centers on MDC lands. A true and correct copy of the publication is attached as Exhibit 4.

14. Since the Conservation Commission was established, fish and wildlife populations have improved dramatically over levels in the 1930s. In 2018, for example, more than 290,000 deer were sustainably harvested (MDC Deer Harvest Summary 2018-2019, available at <https://huntfish.mdc.mo.gov/hunting-trapping/species/deer/deer-harvest-reports/deer-harvestsummaries/deer-harvest-summary-2018>); in 2019, MDC staff and citizen volunteers recorded observations of over 70,000 turkeys in a three-month survey (Missouri Wild Turkey Harvest and Population Status Report 2019, p. 6, available at <https://huntfish.mdc.mo.gov/sites/default/files/downloads/2019TurkeyStatusReport.pdf>.); beaver and otter can be found throughout most of Missouri (See <https://nature.mdc.mo.gov/discover-nature/field-guide/american-beaver>); <https://nature.mdc.mo.gov/discover-nature/field-guide/north-american-river-otter>.); and raccoon and muskrat are common (See <https://nature.mdc.mo.gov/discover->

nature/field-guide/raccoon; <https://nature.mdc.mo.gov/discover-nature/field-guide/common-muskrat>.)

15. In December 2018, the Conservation Commission approved a Land Conservation Strategy (“LCS”) to establish a framework for prioritizing opportunities for land acquisition, conservation easements, lease agreements, cooperative agreements, grants, public access programs, and incentive programs. The LCS builds on the Design for Conservation plan drafted in the 1970s. Its goal is to enhance conservation efforts in priority geographies, enhance conservation of imperiled species and habitats, expand existing conservation areas and close inholdings to maximize resource management efforts, and increase citizen access to the outdoors near where they live. A true and correct copy of the LCS is attached as Exhibit 5.

16. Over the past 80 years, the Conservation Commission has acquired, almost exclusively through willing sellers or donation, more than 800,000 acres for the purpose of fulfilling its mission to protect and manage the fish, forest, and wildlife resources of the state and to facilitate and provide opportunity for all citizens to use, enjoy, and learn about these resources. Ex. 4, p. 5.

17. All moneys arising from the additional sales and use taxes provided for in Article IV, Section 43(a) of the Missouri Constitution and all fees, moneys or funds arising from the operation and transactions of the operation and transactions of the Conservation Commission,

Missouri Department of Conservation, and from the application and the administration of laws and regulations pertaining to the bird, fish, game, forestry and wildlife resources of the state and from the sale of property used for said purposes are deposited and held in the state treasury in the Conservation Commission Fund. Approximately 61.5% of the funds within the Conservation Commission Fund are derived from the conservation sales tax, 16.9% from permit revenues, 15.6% from federal reimbursements, and the remaining funds from sales and rentals and other sources.

Enactment and content of the Conservation Fund Provisions

18. In 1936, an amendment to the Missouri Constitution was placed on the November 3, 1936 general election ballot via the initiative process. Amendment 4, as the conservation amendment was designated, included the provisions shown on Exhibit 6, Official Manual of Missouri 1937-1938, p. 560-561.

19. A true and correct copy of the initiative petition is attached as Exhibit 7.

20. Amendment No. 4 was adopted on November 3, 1936, by more than 71% of the voting electorate. Ex. 6, p. 351.

21. The language in Amendment 4 was included in the Missouri Constitution as Article IV, §§ 40, 41, 42, 43, and 44 when it became effective following the adoption of Amendment No. 4.

22. The 1945 Constitution included the language of Amendment 4 as §§ 40(a), 41, 42,

43, and 44.

23. On November 2, 1976, Missouri voters were presented with a ballot measure proposed by initiative petition. A true and correct copy of the initiative Petition resulting in the 1976 ballot measure is attached as Exhibit 8.

24. Missouri voters approved the 1976 ballot measure, resulting in the repeal of Article IV, § 43 and adoption in lieu thereof of three new sections: Article IV, §§ 43(a) (creating sales and use taxes), 43(b) (sales and use taxes “shall be expended and used” for conservation purposes), and 43(c) (laws “inconsistent” with the amendments ineffective and amendments are “selfenforcing”). Exhibit 9, Official Manual of Missouri, 1977-1978, p. 1291; Ex. 8.

25. In 1980, Missouri voters approved an amendment to Article IV, § 43(b), known as Amendment No. 4, that had been referred by the General Assembly. The amendment allowed conservation sales tax funds to be used to make certain conservation-related payments in lieu of taxes to counties “in such amounts as may be determined by the conservation commission, but in no event shall the amount determined be less than the property tax being paid at the time of purchase of the acquired lands.” Exhibit 10, Official Manual of Missouri 1981-1982, p. 1253-1254.

26. Article IV, § 43(a) currently provides:

For the purpose of providing additional moneys to be expended and used by the conservation commission, department of conservation, for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wildlife resources of the state, including the purchase or other acquisition of property for said purposes, and for the administration

of the laws pertaining thereto, an additional sales tax of one-eighth of one percent is hereby levied and imposed upon all sellers for the privilege of selling tangible personal property or rendering taxable services at retail in this state upon the sales and services which now are or hereafter are listed and set forth in, and, except as to the amount of tax, subject to the provisions of and to be collected as provided in the "Sales Tax Law" and subject to the rules and regulations promulgated in connection therewith; and an additional use tax of one-eighth of one percent is levied and imposed for the privilege of storing, using or consuming within this state any article of tangible personal property as set forth and provided in the "Compensating Use Tax Law" and, except as to the amount of the tax, subject to the provisions of and to be collected as provided in the "Compensating Use Tax Law" and subject to the rules and regulations promulgated in connection therewith.

27. Article IV, § 43(b) currently provides:

The moneys arising from the additional sales and use taxes provided for in section 43(a) hereof and all fees, moneys or funds arising from the operation and transactions of the conservation commission, department of conservation, and from the application and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wildlife resources of the state and from the sale of property used for said purposes, shall be expended and used by the conservation commission, department of conservation, for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wildlife resources of the state, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto, and for no other purpose. The moneys and funds of the conservation commission arising from the additional sales and use taxes provided for in 43(a) hereof shall also be used by the conservation commission, department of conservation, to make payments to counties for the unimproved value of land for distribution to the appropriate political subdivisions as payment in lieu of real property taxes for privately owned land acquired by the commission after July 1, 1977 and for land classified as forest cropland in the forest cropland program administered by the department of conservation in such amounts as may be determined by the conservation commission, but in no event shall the amount determined be less than the property tax being paid at the time of purchase of acquired lands.

28. Article IV, § 43(c) currently provides:

The effective date of this amendment* shall be July 1, 1977. All laws inconsistent with this amendment shall no longer remain in full force and effect after July 1, 1977. All of the provisions of sections 43(a)-(c) shall be

self-enforcing except that the general assembly shall adjust brackets for the collection of the sales and use taxes.

29. Article IV, § 44 currently provides:

Sections 40-43, inclusive of this article shall be self-enforcing, and laws not inconsistent therewith may be enacted in aid thereof. All existing laws inconsistent with this article shall no longer remain in force or effect.

Historical Content of Certain Appropriation Provisions in the Missouri Constitution

30. Missouri's first constitution provided that "[n]o money shall be drawn from the treasury but in consequence of appropriations made by law[.]" Mo. Const. art. III, § 31 (1820).

31. Missouri's second constitution in 1865 following the Civil War included the same language as the second constitution quoted in Paragraph 30. Mo. Const. art. XI, § 6 (1865); 49 Mo. 216, 219 (1872) (advisory opinion to Governor Brown).

32. Missouri's third constitution in 1875 during Reconstruction directed the General Assembly to not "permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law." Mo. Const. art. IV, § 43 (1875).

33. Missouri's current constitution provides that "All revenue collected and received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law." Mo. Const. art. III, § 36 (1945).

The Payment Request Process

34. To request that a particular payment be paid out of the Conservation Commission Fund within the state treasury, the Conservation Commission submits a request for certification to the OA Commissioner through the SAMII system.

35. The SAMII system requires that the Conservation Commission designate an appropriation bill from which the payment is to be debited.

Appropriations Bills and Historical Context

36. The General Assembly has appropriated funds for the Conservation Commission on numerous occasions, including for land acquisition and payments to counties in lieu of taxes.

37. A true and correct copy of Plaintiff Conservation Commission's Answers to Defendants' Interrogatories is attached as Exhibit 11.

38. The Conservation Commission and MDC "annually provide information regarding the budget approved by the Conservation Commission in response to requests made by the General Assembly and the Governor's office." *Id.* at 2.

39. Before this dispute, the Conservation Commission and MDC have never expended funds from the Conservation Commission Fund within the State Treasury except pursuant to an appropriation by the General Assembly.

40. Fiscal Year 2021 is the first instance in which the stated parameters of an appropriation passed by the General Assembly did not match the Conservation Commission's plans for use of funds within the Conservation Commission Fund for land acquisition and PILT

payments.

41. HB 2017 (2020) included the following line items:

“Section 17.170. To the Department of Conservation

For stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; for major improvements and repairs (including materials, supplies and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities, erosion control, and land improvement on department land

Representing expenditures originally authorized under the provisions of House Bill 2019, Section 19.020, an Act of the 99th General Assembly, Second Regular Session, and most recently authorized under the provisions of House Bill 17, Section 17.190, an Act of the 100th General Assembly, First Regular Session”

“Section 17.175. To the Department of Conservation

For stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; for major improvements and repairs (including materials, supplies and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities, erosion control, and land improvement on department land Representing expenditures originally authorized under the provisions of House Bill 19, Section 19.025, an Act of the 100th General Assembly, First Regular Session”

Exhibit 12, HB 2017 (2020).

42. HB 2019 (2020) included the following line item:

“Section 19.020. to the Department of Conservation

For major improvements and repairs (including materials, supplies, and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities, erosion control, and land improvement on department land”

Exhibit 13, HB 2019 (2020).

43. HB 17 (2019) included the following line items:

“Section 17.185. To the Office of Administration

For the Department of Conservation

For stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; for major improvements and repairs (including materials, supplies and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities and erosion control on department land

Representing expenditures originally authorized under the provisions of House Bill 2018, Section 18.040, an Act of the 99th General Assembly, Second Regular Session”

“Section 17.190. To the Department of Conservation

For stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; for major improvements and repairs (including materials, supplies and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities and erosion control on department land

Representing expenditures originally authorized under the provisions of House Bill 2019, Section 19.020, an Act of the 99th General Assembly, Second Regular Session”

44. HB 18 (2019) included the following line item:

“Section 18.040. To the Office of Administration

For the Department of Conservation

For stream access development; lake site development; financial assistance to other public agencies or in partnership with other public agencies; major improvements and repairs (including materials, supplies and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities, erosion control, and land improvement on department land”

45. HB 19 (2019) included the following line item:

“Section 19.025. To the Department of Conservations

For stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; for major improvements and repairs (including materials, supplies and labor) to buildings, roads, hatcheries, and other departmental structures; and for

soil conservation activities, erosion control, and land improvement on department land”

46. HB 2017 (2018) included the following line items:

“Section 17.300. To the Department of Conservation
For stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; for major improvements and repairs including materials, supplies and labor to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities and erosion control on department land
Representing expenditures originally authorized under the provisions of House Bill Section 18.050, an Act of the 98th General Assembly, First Regular Session and most recently authorized under the provisions of House Bill Section 17.400, an Act of the 99th General Assembly, First Regular Session”

“Section 17.305. To the Department of Conservation
For stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; for major improvements and repairs (including materials, supplies and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities and erosion control on department land
Representing expenditures originally authorized under the provisions of House Bill Section 2018.045, an Act of the 98th General Assembly, Second Regular Session and most recently authorized under the provisions of House Bill Section 17.405, an Act of the 99th General Assembly, First Regular Session”

47. HB 2019 (2018) included the following line item:

“Section 19.020. To the Department of Conservation
For stream access acquisition and development; lake site acquisition and development; financial assistance to other public agencies or in partnership with other public agencies; land acquisition for upland wildlife, state forests, wetlands, and natural areas and additions to existing areas; for major improvements and repairs (including materials, supplies and labor) to buildings, roads, hatcheries, and other departmental structures; and for soil conservation activities and erosion control on department land”
The FY2021 Budget and Payment Requests

48. On July 9, 2020, the Conservation Commission approved the purchase of 510 acres of land in St. Clair County from a willing seller as an addition to the Linscomb Wildlife Area (“St. Clair Property”). A true and correct copy of the Notice of Commission Action is attached as Exhibit 14.

49. The St. Clair Property contains 350 acres of one type of an imperiled habitat, the tallgrass prairie habitat, and has the potential for additional restoration of dry-mesic sandstone shale and limestone/dolomite prairie and the state critically imperiled wet mesic bottomland prairie.

50. The closing date for the St. Clair Property was initially set for September 10, 2020, but has been delayed in light of the need for resolution of disputed issues presented in this litigation.

51. To purchase the St. Clair Property, the Conservation Commission approved use of unencumbered funds within the Conservation Commission Fund out of \$21 million in Conservation Commission funds designated by the Commission in its Fiscal Year (FY) 2021 budget for new land acquisition, new capital improvement projects, and payments in lieu of taxes (“PILT”) in FY 2021.

52. A true and correct copy of the Commission’s approved FY 2021 budget of \$21 million in Conservation Commission Funds to be used for new land acquisition, new capital improvement projects, and PILT payments in FY 2021 is attached as Exhibit 15.

53. Via the SAMII system, on August 24, 2020, Plaintiffs requested that Defendant OA Commissioner certify or otherwise approve payment from the Conservation Commission Fund for the St. Clair Property, and instructed that the payment be debited against the \$21 million FY 2021 appropriation passed by the legislature as House Bill 2019 (2020) shown in Paragraph 42.

54. The Conservation Commission has made PILT payments to counties annually since 1980.

55. In December 2020, the Conservation Commission made a determination pursuant to Article IV, Section 43(b) of the Missouri Constitution to make payments to counties for the unimproved value of land as payments in lieu of real property taxes for privately owned land acquired by the Conservation Commission after July 1, 1977, and for land classified as forest cropland in the forest cropland program administered by MDC in the amounts set forth in the schedules attached as Exhibit 16, (collectively, “2020 PILT payments”).

56. Via the SAMII system, on December 18, 2020, Plaintiffs requested that Defendant OA Commissioner certify or otherwise approve the 2020 PILT payments and instructed that the payments be debited against the \$21 million FY 2021 appropriation passed by the legislature as House Bill 2019 (2020) shown in Paragraph 42.

57. The line item in HB 2019 (2020) shown in Paragraph 42 corresponded to the \$21 million budgeted by the Commission to be used from the Conservation Commission Fund for new land acquisition, new capital improvement projects, and PILT payments in FY 2021.

58. There is an unencumbered balance in the Conservation Commission Fund sufficient for the entirety of the Conservation Commission's FY 2021 budget, including for the purchase price of the St. Clair County property and the 2020 PILT payments.

59. The OA Commissioner has not certified or otherwise approved the requested payment for purchase of the St. Clair Property, nor for the PILT payments.

60. The Commission's approved FY 2021 budget has a slate of FY 2021 capital improvement projects, originally approved for or during or initiated during prior fiscal years, with a total amount that matches the amounts appropriated by the General Assembly in HB 2017 (2020) shown in Paragraph 41.

61. A true and correct copy of the slate of projects in the FYI 2021 Commission budget that corresponds to the amounts appropriated for the Commission or MDC in HB 2017 (2020) is attached as Exhibit 17.

62. The slate of projects in the FY 2021 Commission budget that corresponds to the amounts appropriated for the Commission or MDC in HB 2017 (2020) does not include new purchases such as purchase of the St. Clair Property, nor PILT payments.

63. Plaintiffs have not requested that the OA Commissioner certify or otherwise approve the requested payment for purchase of the St. Clair Property and the PILT payments pursuant to HB 2017 (2020). Exhibit 18, Plaintiffs' Answers to Defendants' Requests for Admission, at 1-2.

64. A true and correct certified copy of the Bill File of House Bill 2019 from the 100th General Assembly, 2nd Regular Session is attached as Exhibit 19.

65. A true and correct copy of a June 11, 1953 letter from the Missouri Attorney General in response to a request for opinion pertaining to certain portions Section 4.510 of House Bill No. 361 is attached as Exhibit 20.

66. A true and correct copy of a May 29, 1958 letter from the Missouri Attorney General in response to a request for an opinion pertaining to appropriations in Sections 4.510 (Conservation Commission Fund) and 4.520 (General Revenue Fund) of Senate Committee Substitute for House Committee Substitute for House Bill No. 4 is attached as Exhibit 21.

67. A true and correct copy of pages 106 and 264-265 of JAMES F. KEEFE, MISSOURI DEPARTMENT OF CONSERVATION: THE FIRST 50 YEARS (1987) referenced in paragraph 11 of the Joint Stipulation of Facts previously filed with the Court is attached as Exhibit 22.

68. A true and correct copy of an August 21, 2020 letter from MDC Director Sara Parker Pauley to the OA Commissioner is attached as Exhibit 23.

69. A true and correct copy of a December 11, 2020 letter from MDC Director Sara Parker Pauley to the OA Commissioner is attached as Exhibit 24. The exhibits to this letter are the same documents that were included in Exhibit 16 referenced in the parties' Joint Stipulation previously filed with the Court.

70. A true and correct copy the Journal of the Senate Second Regular Session FiftyNinth Day – Wednesday, May 27, 2020 is attached as Exhibit 25. 71. A true and correct

copy the Journal of the House Second Regular Session, 100th General Assembly, Sixty-Fifth Day – Wednesday, May 27, 2020 is attached as Exhibit 26.

ADDITIONAL FINDINGS

1. The Conservation Commission was borne of dissatisfaction with the State's politically appointed and underfunded Fish and Game Department and a wildlife crisis made acute by the drought that began in 1933 and continued through 1936.
2. From early statehood through the 1920s, Missouri wildlife declined during decades of commercialization, ineffective regulation and enforcement of game laws, and frequent legislative tinkering.
3. During the 1930 drought years, the ominous dust clouds and forest fires that threatened most forms of wildlife aroused public interest in conservation as nothing had before.
4. After a 1935 wildlife survey revealed the State's breeding reserves of common species to be at precipitously low levels, concerned sportsmen and conservationists banded together to sponsor an initiative to amend the Missouri constitution to divorce the Fish and Game Department from politics and give it adequate authority to carry out all essential phases of a broad conservation program embracing both wildlife and forestry.
5. These efforts culminated in the adoption of Amendment No. 4 on November 3, 1936 by more than 71 percent of the voting electorate. Amendment No. 4 created the Conservation Commission and vested it with broad authority over conservation subjects, personnel decisions, conservation land acquisition decisions, and the funds arising from both its operations and the application and administration of laws pertaining to the bird, fish, game, forestry, and wildlife resources of the State.

6. Two Missouri Supreme Court decisions that followed Amendment No. 4 found the Conservation Commission to have unique constitutional authority over its own management and conservation subjects. *See State ex. inf. McKittrick v. Bode*, 342 Mo. 162 (Mo. 1938); *Marsh v. Bartlett*, 121 S.W.2d 737 (Mo. 1938).

7. From its inception, the Conservation Commission and the Department of Conservation (“MDC”) shunned politics and sought to maintain independence from the General Assembly. Ex. 3, p. 28-30.

8. During the 1950s, at the request of the MDC Director, the Missouri Attorney General issued opinions finding unconstitutional legislative provisos in appropriations bills purporting to prohibit the Conservation Commission from expending conservation funds for the erection of a central office building and salary increases for MDC personnel. Ex. 20 & Ex. 21.

9. In 1976, voters adopted another amendment proposed by initiative to provide additional funds to the Conservation Commission through a sales tax levied and controlled by Article IV, §§ 43(a)-(c). The initiative followed widespread publication of the Conservation Commission’s long-range plan called “Design for Conservation” that pledged to use additional funds for the acquisition of public land for conservation purposes and the enjoyment of Missouri citizens.

10. In 1980, voters adopted an amendment to § 43(b) proposed by referendum that permitted Conservation Funds to be used for PILT payments to counties in amounts to be determined by the Conservation Commission. PILT payments ameliorate the financial burden on counties from increased public land holdings and associated lost tax revenue.

11. The Conservation Commission has used Conservation Funds to acquire some 800,000 acres of land for conservation purposes, almost exclusively from willing sellers. The

Conservation Commission employs criteria to set priorities for land acquisition. These criteria are currently memorialized in a Land Conservation Strategy approved in 2018.

12. The Conservation Commission has made PILT payments annually to counties since the 1980 amendment became effective.

13. In July 2020, the Conservation Commission approved purchase of 510 acres of land in St. Clair County from a willing seller. The land includes imperiled prairie habitat and would be an addition to the Linscomb Wildlife Area already owned by the Conservation Commission.

14. In December 2020, the Conservation Commission made determinations pursuant to Article IV, §43(b) for 2020 PILT payments to counties, totaling approximately \$900,000.

15. The Conservation Commission approved the land purchase and PILT expenditures out of the Conservation Fund consistent with its FY2021 budget and appropriation request.

16. There is an unencumbered balance in the Conservation Fund sufficient for the entirety of the Conservation Commission's FY2021 budget.

17. The Conservation Commission directed MDC to submit the payment requests for the St. Clair land and PILT payments through the SAMII system, designating HB2019 as the appropriation. HB2019's appropriation amount corresponds with the Conservation Commission's FY2021 budget for various new expenditures, including new land purchases and PILT.

18. During the legislative process, the General Assembly amended HB2019 to remove language that is normally present in appropriations that would cover new land purchases and PILT payments, *i.e.*, "land acquisition for upland wildlife, state forests, wetlands, and natural

areas and additions to existing areas,” “land acquisition for upland wildlife,” and “financial assistance to other public agencies or in partnership with other public agencies.”

19. FY2021 is the first instance in which the stated parameters of an appropriation passed by the General Assembly did not match the Conservation Commission’s plans for use of funds within the Conservation Fund for land acquisition and PILT payments.

20. The Commissioner of Administration refused to certify the payments as requested, citing the language of HB2019 as amended.

STANDARD

A declaratory judgment may issue if the court is presented with (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, (2) a plaintiff with a legally protectable interest at stake, (3) a controversy ripe for judicial determination, and (4) an inadequate remedy at law. *Missouri Soybean Ass’n v. Missouri Clean Water Comm’n*, 102 S.W.3d 10, 25 (Mo. banc 2003). “In the context of a constitutional challenge to a statute, a ripe controversy generally exists when the state attempts to enforce the statute.” *Missouri Health Care Ass’n v. Attorney General of the State of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997). A plaintiff raises a ripe single subject challenge when the challenged law impacts expenditure of public funds or the plaintiff directly. *See Lebeau v. Comm’rs of Franklin County, Missouri*, 422 S.W.3d 284, 290-291 (Mo. banc 2014).

CONCLUSIONS OF LAW

All prerequisites for issuance of a declaratory judgment are met. The action (or inaction) of the Commissioner of Administration and the position that she and the General Assembly have taken with regard to who has authority to control expenditures from the Conservation Fund for conservation purposes raise a justiciable question of the scope of the authority of the General

Assembly vis-à-vis the Conservation Commission.¹ As discussed in (I) below, the General Assembly has exceeded its authority vis-à-vis the Conservation Commission by enacting an appropriations bill that purports to assume for the General Assembly a portion of the plenary authority over the Conservation Fund that is expressly granted to the Conservation Commission by Article IV, §§ 43 (a), (b), and (c). And as discussed in II, if the General Assembly had authority to change the authority of the Conservation Commission (it does not), it could not have accomplished the change through an appropriations bill because to do so would violate the “single subject” requirement of Article III, § 23.

I.

In answering the question posed here, this Court must give consideration to “the broader purposes and scope of the constitutional provisions.” *Brown v. Morris*, 290 S.W.2d 160, 167 (Mo. banc 1956). Ultimately, the question is the intent of the people when adopting the pertinent portions of the constitution: “When construing a constitutional amendment, the ‘fundamental purpose of constitutional construction is to give effect to the intent of the voters who adopted the Amendment.’” *State v. Shanklin*, 534 S.W.3d 240, 242 (Mo. banc 2017), quoting *School Dist. of Kansas City v. State*, 317 S.W.3d 599, 605 (Mo. banc 2010). *See also Johnson v. State*, 366 S.W.3d 11, 35 (Mo. banc 2012) (“[T]he primary rule is to ‘give effect to the intent of the voters’ who approved the constitutional language.”) (Price, J. concurring).

Phrasing the question specific to the issue presented here, it might read:

¹ There is no merit in Defendants’ suggestion that the Conservation Commission can use funds from HB2017 for the expenditures at issue to avoid a decision on the constitutionality of HB2019. HB2017’s appropriation is for expenditures authorized in prior fiscal years, which exclude the new land purchase and PILT expenditures at issue. The amount appropriated in HB2017 is also insufficient to meet Plaintiffs’ full budget needs in FY2021.

1. Did the voters, when adopting Article IV, §§ 43(a), (b), and (c), intend to give authority to the Conservation Commission to “expend[] and use[]” the revenue raised through the conservation sales tax and operations of the Commission for purposes listed in the amendment, without being dependent on legislative action, even through the appropriations process?

Or phrased in the alternative:

2. Did the voters, when adopting Article IV, §§ 43(a), (b), and (c), intend to leave the legislature the ability, through the appropriations process, to dictate whether, how much, and for what the Conservation Commission may “expend[] and use[]” the moneys in the Conservation Fund?

For the reasons stated below, the answer to question (1) is “yes,” the voters did intend to give plenary authority over the Conservation Fund to the Conservation Commission. And the answer to the alternative question is “no,” the voters did not intend to leave in the hands of the General Assembly the ability to dictate whether, how much, and for what the Conservation Commission could spend from the Conservation Fund.

Article IV, § 43(a) establishes the conservation sales tax and creates the Conservation Fund, consisting of the proceeds of that tax and other revenue from the Department of Conservation. The language that is key here is found in §§ 43 (b), and (c), which address the authority of the Conservation Commission with regard to the proceeds. As noted above, the voters enacted §§ 43(a), (b), and (c) in 1976, building on language originally adopted in 1936. They retained the same authority for the Conservation Commission when they amended § 43(b) in 1980—as proposed this time by the General Assembly—to add PILT as an item to those for which the funds could be “expended and used.”

Section 43(b) sets out the purposes for which the Conservation Fund can be spent. But it also gives authority—without reservation—to the Conservation Commission to make spending decisions, within the scope of the purposes allowed:

The moneys arising from the additional sales and use taxes provided for in section 43(a) hereof and all fees, moneys or funds arising from the operation and transactions of the conservation commission, department of conservation, and from the application and the administration of the laws and regulations pertaining to the bird, fish, game, forestry and wildlife resources of the state and from the sale of property used for said purposes, shall be expended and used by the conservation commission, department of conservation, for the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and wildlife resources of the state, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto, and for no other purpose. The moneys and funds of the conservation commission arising from the additional sales and use taxes provided for in 43(a) hereof shall also be used by the conservation commission, department of conservation, to make payments to counties for the unimproved value of land for distribution to the appropriate political subdivisions as payment in lieu of real property taxes for privately owned land acquired by the commission after July 1, 1977 and for land classified as forest cropland in the forest cropland program administered by the department of conservation in such amounts as may be determined by the conservation commission, but in no event shall the amount determined be less than the property tax being paid at the time of purchase of acquired lands.

That section expressly and unequivocally assigns to the Conservation Commission plenary authority to “expend[] and use[]” the Fund. It does not state, imply, or permit any role for the General Assembly in restricting the ability of the Conservation Commission in making those decisions.

The voters confirmed that intent in § 43(c). There, the voters declared:

All of the provisions of sections 43(a)-(c) shall be self-enforcing except that the general assembly shall adjust brackets for the collection of the sales and use taxes.

As Defendants said in their Trial Brief,

in legal usage, a constitutional provision is ‘self-enforcing’ if *no further legislative action* (such as an enactment of an implementing statute) *is required* to give effect to that provision.”

Def. Br. at 13 (emphasis added), citing *State ex rel. Miller v. O’Malley*, 342 Mo. 641, 649 (Mo. banc 1938); and *State ex rel. Applegate v. Taylor*, 224 Mo. 393 (Mo. 1909). Among the

“provisions of sections 43(a)-(c)” that are self-enforcing is the provision for the Conservation Commission to have full authority to make spending decisions with regard to the Conservation Fund. That means that when the voters adopted § 43(c), they were saying that § 43(b) was fully effective even if the General Assembly did nothing.

The analysis of §§ 43(a), (b), and (c) is informed by §§ 40(a), 41 and 44, which trace back to Amendment No. 4 adopted in 1936. Section 40(a) creates the Conservation Commission and vests it with the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state including land acquired for those purposes, thereby limiting the General Assembly’s powers over these subjects. Section 41 permits the Conservation Commission to acquire land it deems necessary for conservation purposes. Section 44 makes §§ 40(a)-43 self-enforcing and limits the General Assembly to enacting laws as may “aid” those provisions.

Collectively, §§ 40(a)-44 bar the General Assembly from telling the Conservation Commission that it can use money from the Conservation Fund to manage bird resources but not fish resources, or to spend to save one species of fish but not another. These sections bar the General Assembly from dictating whether, where, or when to purchase property for conservation purposes or how much to pay counties in PILT. These sections reserve all such decisions to the Conservation Commission.

Such a restriction on the power of the General Assembly is consistent with how the constitution addresses other special funds. Where the constitution leaves those funds subject to the General Assembly’s general appropriations authority, it either says so, or leaves no alternative. Here, there is not just an alternative, but one that the constitution expressly provides.

The distinction is perhaps most apparent with regard to another, largely parallel state sales tax: the parks and soil conservation tax imposed by Article IV, §§ 47(a), (b), and (c). In both § 47(a) and § 47(b), the constitution expressly reserves appropriations power in the General Assembly. If §§ 43(a) and (b) were read to also leave that power in the legislature, the specific appropriations language that the General Assembly put into, and the voters enacted in, § 47(a) and § 47(b) would be surplusage. But it is not; that language defines the key difference between the constitutional regimes for using the revenue derived from the two sales taxes.

The plenary authority given to the Conservation Commission by §§ 43(a), (b), or (c) is not clawed back by other, more general, preexisting constitutional provisions.

- Article IV, § 23 tells the legislature to appropriate funds for either one or two entire years; it does not say anything about whether another constitutionally-empowered entity can make spending decisions independent of appropriations bills.
- Article III, § 36 bars the general assembly from delegating its appropriations authority, but does not affect a delegation made by the constitution itself.
- Article IV, § 28 requires that a payment be made pursuant to an appropriation “made by law,” but “by law” is not limited to those made by appropriations bills.

These provisions do not bar the payment of moneys from the Conservation Fund pursuant to instructions by the Conservation Commission.

Because the constitution places plenary power over the Conservation Fund in the hands of the Conservation Commission rather than the General Assembly, the Conservation Commission is entitled to the declaration that it seeks.

II.


The declaration the Conservation Commission seeks may also be grounded on the principle that even if the General Assembly had authority to limit the ability of the Conservation Commission to decide whether, when, and for what to spend money in the Conservation Fund, it could not exercise that authority in an appropriations bill. To combine a change in the Commission's authority in an appropriations bill violates the single subject limitation in Article III, § 23. An appropriations bill contains impermissible multiple subjects if it contains "appropriations and amendments to substantive law." *Planned Parenthood of St. Louis Region v. Department of Social Services*, 602 S.W.3d 201, 208 (Mo. banc 2020).

In 1953 and 1958, the Attorney General issued opinions to the MDC Director correctly concluding that attempts by the General Assembly to control Conservation Fund expenditures were unconstitutional attempts to include general legislation within an appropriation act. Ex. 20 & Ex. 21. The same analysis applies to the General Assembly's elimination in HB2019 of language permitting new land purchases and PILT payments from the list of purposes for which moneys in the Conservation Fund can be spent by the Conservation Commission.

CONCLUSION

For the foregoing reasons, the Commissioner of Administration must certify the St. Clair land purchase and PILT payments as requested by the Conservation Commission.

SO ORDERED.



Honorable Cotton Walker, Circuit Judge

Dated: April 22, 2021